

Committee Opinion
January 19, 1990

LEGAL ETHICS OPINION 1306

CONTINGENT FEES – COLLECTION
PRACTICE – UNAUTHORIZED
PRACTICE OF LAW: REPRESENTING A
LOCAL MERCHANTS ASSOCIATION
WHERE CREDITORS HAVE ASSIGNED
THEIR RIGHTS TO THE ASSOCIATION
TO COLLECT THE DEBT.

You have advised that you have been asked to represent the local merchants association in certain collection matters where the creditors will assign their rights to collect monies to the association; the association will serve as the administrative body to collect these monies; and a lawsuit will be brought under the association name. You indicate that the actual creditor will advance the costs on each claim and will be ultimately responsible for all decisions on its own case.

You have asked the Committee to consider the propriety of your representing the association if you are paid on a contingency basis depending upon the sum recovered by your representation.

The Committee believes that underlying questions regarding the creditors' assignment of rights to the association and the subsequent bringing on of a suit under the association name are matters of legal significance, determination of which is beyond the purview of the Committee. The Committee directs your attention, however, to Part Six, Section One, Unauthorized Practice Rule 3 of the Rules of the Supreme Court of Virginia which outlines permissible activities of collection agencies. The Committee particularly directs your attention to UPR 3-102(A) which requires the collection agency to submit a list of lawyers from which the creditor may make his selection for representation. Whether the association you describe is in fact a collection agency is similarly a legal question also beyond the purview of this Committee. (See also *Richmond Association of Credit Men, Inc. v. Bar Association of the City of Richmond*, 167 Va. 327 (1937); UPL Opinion No. 88)

The Committee cautions that should the association's activities be determined to constitute the unauthorized practice of law under the above-cited rule, the lawyer must be cognizant of his responsibilities under Disciplinary Rule 3-101(A) [DR:3-101] which precludes a lawyer from aiding a nonlawyer in the unauthorized practice of law and under DR:3-102(A) which prohibits the lawyer from sharing legal fees with a nonlawyer.

However, should it be legally determined that the association you described is permitted to proceed as you have indicated, the Committee believes that the appropriate and controlling disciplinary rules regarding your ethical responsibilities are DR:5-106(A) and (B) which respectively prohibit a lawyer from accepting compensation for his legal services from one other than his client, except with the consent of the client, and from permitting a person who recommends, employs or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services. Further guidance is available in Ethical Considerations 5-21 [EC:5-21] and 5-23 [EC:5-

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23] which delineate circumstances regarding influence of third parties on the independent judgment of the lawyer. In addition, your attention is directed to DR:2-103(D) which precludes a lawyer from compensating a person or organization for recommending or securing the lawyer's employment by a client or as a reward for having made a recommendation which resulted in such employment. Finally, DR:2-105(C) permits contingent fee arrangements except in criminal cases or other matters in which such a fee is prohibited by law.

Despite the lawyer's compliance with the requirements of DR:5-106 and DR:2-103, it is the opinion of the Committee that, under the provisions of DR:2-105, whereas a contingent fee arrangement is not improper when a lawyer and a creditor directly agree to such collection representation and fee, a contingent fee for collection matters is improper where an intermediary brings the lawyer and client together and where the contingent fee is automatic. The Committee is of the belief that such a routine agreement would preclude the lawyer's ability to offer alternative arrangements for reasonable fees should both lawyer and client prefer such alternatives. (See EC:2-22) The Committee views the Code of Professional Responsibility's requirement for reasonable fees to be a matter determined by the direct agreement of the lawyer and client, on a case by case basis and not to be usurped by any organization. (See State Bar of Michigan Opinion RI-15 (March 31, 1989), ABA/BNA Law. Man. on Prof. Conduct 901:4766)

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